

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT NEW YORK**

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MICHAEL REID a/k/a WAYNE MARTIN,

Plaintiff,

v.

THE CITY OF NEW YORK, ET AL.

Defendants.

Docket No.:  
1:17-cv-05268-RPK-JRC

**AFFIRMATION IN  
SUPPORT OF NAPOLI  
SHKOLNIK PLLC'S  
OPPOSITION TO  
PLAINTIFF'S MOTION  
FOR ORDER TO SHOW  
CAUSE**

-----X  
CRAIG PHEMISTER, being duly sworn, deposed and says:

1. The above captioned matter is a lawsuit that arose from the wrongful arrest, conviction and imprisonment of Plaintiff for a November 27, 2005 murder he did not commit, as a result of the willful, intentional, malicious, reckless, negligent and/or deliberate indifference of the City of New York, the New York City Police Department, the Kings County District Attorney's Office and their employees, agents and/or servants, including Detective Kevin Gasser, Police Officer Walter Connolly, Detective Mike Hopkins and Detective Braithwaite.
2. In July of 2016, Michael Reid a/k/a Wayne Martin retained the undersigned, Craig Phemister, Esq., and Napoli Shkolnik, PLLC to handle all criminal and civil matters related to the foregoing, which required dealing with prior legal funding liens and matters involving prior counsel, obtaining and paying for copies of medical records and other documents, among other efforts and expenditures.

3. On September 7, 2016, Plaintiff was released from custody due to the undersigned and the firm's efforts and expenditures. A Notice of Claim was filed against the City of New York and others on October 5, 2016.<sup>1</sup>
4. This civil action was then filed by the undersigned and Napoli Shkolnik, PLLC on September 7, 2017.<sup>2</sup> Throughout the next five years, the undersigned and Napoli's Civil Rights and Personal Injury Department worked tirelessly to obtain discovery to prove the allegations in this federal civil lawsuit – confronting the delayed production of the entire District Attorney's file until May of 2018, delayed production of records pertaining to Plaintiff's wrongful arrest, issues in August of 2018 regarding evidence damaged while in the custody of Defendants, delayed production of medical records in August of 2018, delayed production of the criminal defense file as discussed in April of 2019, delays in coordinating/taking depositions throughout 2018-2019, the stay of discovery as to certain claims, as well as confronting issues with a witness that refused to appear at his deposition to be taken by Defendants in October of 2019, Plaintiff's prior counsel's delay in producing their legal file as discussed in September and October of 2019, three non-party witnesses that were to be deposed as discussed in January of 2020, Defendants' late request to obtain grand jury minutes and the King's County District Attorney and New York Police Department files still not produced in late 2020, among other issues. Defendants implored the Court on several occasions, since at least February of 2019, to allow certain discovery of necessary documents and depositions prior "to complet[ing] plaintiff's deposition." *See*,

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<sup>1</sup> *See Exhibit 2*, Notice of Claim.

<sup>2</sup> At this time, Mr. Henning worked at Napoli Shkolnik, PLLC. However, he was fired two months later, in November of 2017.

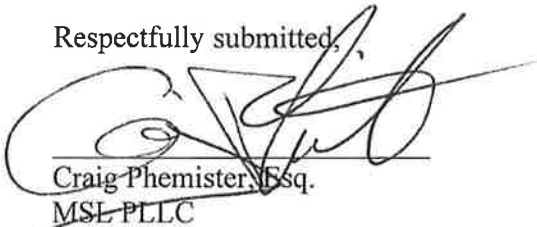
*e.g.*, Letter in Dkt. 30. Discovery plans and amended discovery plans were filed as late as March of 2021.

5. Napoli Shkolnik, PLLC also handled other pre-trial matters crucial to the continuation of the proceedings, including the assertion of absolute and qualified immunity by codefendant prosecutor Marc Fliedner through a motion to dismiss. Based on our professional legal judgment, it was determined that voluntary dismissal was proper. Plaintiff was informed as to this matter.
6. Hearings were held in January, April, August and November of 2018, April and August of 2019, January of 2020 and, despite the COVID-19 pandemic, continued throughout April and July of 2020, June and November of 2021, January of 2022.
7. As of late November 2021, Plaintiff's deposition had still not been completed, the Court denied Defendants' alternate-means subpoena, Napoli's investigator was diligently working to find the third-party witness, and certain criminal records were still subject to redaction. The parties were also ordered to explore settlement in April of 2022 and attend a settlement conference on May 12, 2022. The court's docket demonstrates that this case had always been actively litigated throughout by the undersigned and Napoli Shkolnik, PLLC.
8. Liberty Investigations was retained by Napoli Shkolnik, PLLC to perform investigations necessary for the claims against Defendants, including interviewing potential witnesses, locating individuals with knowledge of relevant facts, among other investigative tasks. The expenses were covered by the firm. It is my understanding that Liberty Investigations' Tanya Williams is a licensed private investigator. Plaintiff was informed of the fact that Liberty Investigations and John Lamont Ramsey were performing the investigation.

9. During the most recent hearing on May 12, it was noted that Plaintiff had still not been deposed and the third-party witness had yet to be located. Discovery had not been delayed by the undersigned nor Napoli, but rather caused by Defendants' demands to conduct extremely thorough discovery and the Legal Department for the City of New York's 18-month shut down due to the COVID-19 pandemic, which was opposed by the undersigned and Napoli. Plaintiff was made aware of these delays on multiple occasions through telephone conversations with the undersigned, the last of which was on April 4, 2022.
10. During the month of April of 2022, I resigned from Napoli Shkolnik, PLLC. It is my understanding that this was informed to Plaintiff during the same month.

Dated: June 3, 2022  
New York, New York

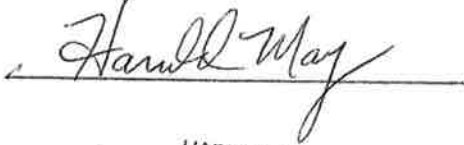
Respectfully submitted,



Craig Phemister, Esq.  
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Sworn to before me this  
3<sup>rd</sup> day of June, 2022



HAROLD MAY  
Notary Public, State of New York  
Reg. No. 01MA5069176  
Qualified in Suffolk County  
Commission Expires November 18, 2022